

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 4/28/2022
--

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
SIRIUS XM RADIO INC.,

Plaintiff,

-v -

AURA MULTIMEDIA CORPORATION, AURA :
MULTIMEDIA TECHNOLOGIES CO., and :
CLAYTON B. BURTON JR. :

Defendants. :

----- X
GREGORY H. WOODS, United States District Judge:

1:21-cv-06963-GHW

ORDER

On April 6, 2022, Magistrate Judge Aaron issued a Report and Recommendation (“R&R”) recommending that the Court deny Defendant Clayton B. Burton, Jr.’s motion to dismiss the Complaint on the grounds of insufficient process and insufficient service of process. Dkt. No. 60 at 15. In that R&R, Magistrate Judge Aaron deferred making a recommendation on Defendant Burton’s motion to dismiss based on lack of personal jurisdiction, improper venue, and failure to state a claim. *Id.* at 1-2, 2 n.2. In addition, Magistrate Judge Aaron declined to address Defendant Burton’s motion to dismiss based on lack of subject matter jurisdiction, due to the absence of any substantive discussion of subject matter jurisdiction in Defendant’s motion. *Id.* at 2 n.2.

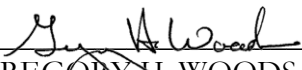
A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may raise specific, written objections to the report and recommendation within fourteen days of receiving a copy of the report. *Id.*; *see also* FED. R. CIV. P. 72(b)(2). The Court reviews for clear error those parts of the report and recommendation to which no party has timely objected. 28 U.S.C. § 636(b)(1)(A); *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).

No objection to the R&R was submitted within the fourteen-day window. The Court has reviewed the R&R for clear error and finds none. *See Braunstein v. Barber*, No. 06 Civ. 5978 (CS) (GAY), 2009 WL 1542707, at *1 (S.D.N.Y. June 2, 2009) (explaining that a “district court may adopt those portions of a report and recommendation to which no objections have been made, as long as no clear error is apparent from the face of the record.”). The Court, therefore, accepts and adopts the R&R with respect to Defendant Burton’s motion to dismiss in its entirety. For the reasons articulated in the R&R, Defendant Burton’s motion to dismiss based on insufficient process and insufficient service of process is DENIED. The Court defers ruling on Defendant Burton’s motion to dismiss based on lack of personal jurisdiction, improper venue, and failure to state a claim.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 49.

SO ORDERED.

Dated: April 28, 2022
New York, New York



GREGORY H. WOODS
United States District Judge